Warner Norcross&Judd LLP
ATTORNEYS AT LAW

STEVEN C. KOHL

248.784.5141
FAX 248.603.9741

skohl@wnj.com

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Corbin Davis
Clerk of the Court
Michigan Supreme Court
Michigan Hall of Justice
P.O. Box 30052
Lansing, Michigan 48909

Re: **ADM File No. 2002-24 – Amendment of MRPC 7.3**

Dear Clerk Davis:

Warner Norcross & Judd LLP wishes to join with the State Bar of Michigan and others who have provided negative comment upon the current proposed amendment to Rule 7.3 of the Michigan Rules of Professional Conduct and its immediate predecessor, which the Court rescinded in its Order of July 19, 2011. Like others, we would urge the Court to either retain the existing Rule 7.3 or adopt the ABA's Model Rule 7.3. In our judgment, both the currently proposed amendment and the earlier amendment are overly broad, ambiguous, and likely to create confusion. In addition, the current effort to amend Rule 7.3 fails to recognize and appropriately address the varied means by which lawyers communicate with clients or prospective clients through the internet and associated social media.

While "mass media" advertising via radio or television is unregulated by the proposal, all written communication, no matter how broadly disseminated and no matter the means of distribution to potential clients, if deemed motivated for prospective pecuniary gain, must begin with and end with an "Advertising Material" disclaimer. We read the proposed amendment to require that a law firm broadly distributing written materials through the internet must label those materials as advertising, irrespective of the content, if the motive is the marketing of the law firm. We are also concerned that written presentations at live seminars or through webinars would be required to contain the advertising disclaimer if the motivation for participating in such events is to market the law firm or a lawyer's expertise to prospective clients. Similarly, a law firm brochure, explaining the firm's areas of practice expertise and experience apparently would be required to contain the advertising disclaimer. The scope of the proposal appears broad enough to possibly require that some lawyer or law firm website pages, blogs, Twitters, Facebook, LinkedIn and other internet or electronic written communication contain an advertising disclaimer.

All responsible members of the Bar can agree that the conduct sought to be prohibited by subsection (d) of the proposed Rule should not be permitted. However, there is no need to adopt the overly broad and ambiguous requirements of subsection (c) in order to guard against such conduct. Responsible marketing of a lawyer's or law firm's expertise, experience or other attributes through electronic written communication, social media, seminars, webinars, and distribution of firm brochures does not require prophylactic labeling as "Advertising Material." That labeling should be required, if at all, only for targeted solicitations, in the manner prescribed by the ABA Model Rule.

Instances of irresponsible communication in any form, for purposes of solicitation, have been and can be addressed under the existing rules or adoption of the ABA model rule. Accordingly, we urge the Court not to adopt the current proposed amendment to MRPC Rule 7.3.

Sincerely,

Steven C. Kohl
Partner

SCK/lbg

cc: Douglas E. Wagner
Jay A. Cragwall
Andrea J. Bernard

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